

28E AGREEMENT
BETWEEN the IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE
TANK FUND BOARD AND THE IOWA DEPARTMENT OF NATURAL RESOURCES
for THE STUDY OF PUMPING WELL INFLUENCE ON PETROLEUM
CONTAMINATION PLUMES

This Agreement is entered into by and between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (hereinafter “Board”), with its Administrator’s office located at 2700 Westown Parkway, Suite 320, W. Des Moines, Iowa 50266, and the Iowa Department of Natural Resources (hereinafter “DNR”), located at 502 E. 9th Street, Des Moines, IA 50319. This Agreement is entered into pursuant to Iowa Code chapter 28E and Iowa Code sections 455G.5 and 455G.6(15), and is effective as of the date it is fully executed by all parties.

I. PURPOSE

In 2006, the Software Investigation Committee (a committee including DNR staff and interested stakeholders) was formed to examine the risk based corrective action (RBCA) Tier 2 software used for evaluating potential risks from petroleum releases. The purpose of the Committee was to investigate the possibility of making the Tier 2 model more representative of actual risk posed by the existence of contamination at leaking underground storage tank (LUST) sites. The Committee concluded the model should be adjusted to provide a more realistic predicted plume size; however, the DNR has some concerns that an at-risk pumping well may not be identified because of the smaller projected plumes in the recalibrated Tier 2 model, and that a two-dimensional model and traditional two-dimensional sampling regime at LUST sites may not adequately characterize pumping influences of the well on contaminant plume movement or vertical migration.

The purpose of this Agreement is to establish the terms and conditions under which the Board will provide funding to the DNR to evaluate the risk posed by UST petroleum contamination to public water supply wells that are located outside the actual or modeled groundwater plume and which may otherwise have been classified no action required with a Tier 1 or Tier 2 risk assessment. The study will incorporate and evaluate the criteria in ITEM 5 of ARC 6892B as published in the July 2, 2008 edition of the Iowa Administrative Bulletin.

At a minimum the study will screen no less than 125 new, current or historical LUST sites. The results of the study will be used to modify RBCA rules to ensure adequate protective screening is in place to identify and address any unreasonable risk to human health through public water supplies. The intent in the broadest sense, is to provide for continued calibration of the Tier 2 model to ensure it is an appropriate screening tools for risk posed to relevant receptors.

The parties mutually agree that nothing contained in this agreement is intended to limit,

modify, change, expand, restrict, rescind or otherwise alter the statutory or regulatory authority, duties or responsibilities of either party.

II. TERM

Unless otherwise terminated in accordance with the terms of this Agreement, the Agreement shall be in effect for five years from its effective date, or the completion of the study. Upon completion of the study, should results indicate a change in Chapter 567 IAC 135 (RBCA) rules is warranted, the term and conditions specified in the agreement regarding well assessment and funding shall be extended to sufficiently be protective of wells during the period under which rules changes are made and finalized.

III. ADMINISTRATION

This Agreement shall be administered by the Board and its Administrator in consultation with the DNR. All administrative decisions concerning this Agreement shall be undertaken pursuant to the terms outlined herein.

IV. RESPONSIBILITIES

The DNR and the Board shall retain all powers and duties conferred by their respective enabling acts, but shall assist each other in the exercise of these powers and the performance of these duties in the following manner:

A. DNR RESPONSIBILITIES

1. Provide regulatory oversight of sites using the calibrated Tier 2 model.
2. Identify sites that warrant additional study, beyond the required Tier 1 or Tier 2 risk assessment, for which the department believes the public water supply well may potentially be at risk. The DNR may use any criteria for selection of these sites.
3. Jointly develop scope of work for the additional study to be completed consistent with Item 5 in ARC 6892B as published July 2, 2008 in the Iowa Administrative Bulletin.
4. Jointly review and evaluate proposals in the selection of qualified professionals to perform the requested scope(s) of work.
5. Consolidate and track results of studies as they are completed.
6. If the results of the study of public water supply wells located outside the actual or modeled groundwater plumes indicate that additional assessment procedures are required to adequately protect public drinking water

supplies, the DNR shall promulgate rules to outline those procedures.

7. Assist the Board in securing any grants or funding to offset the costs associated with this agreement.

B. BOARD RESPONSIBILITIES

1. Provide funding for study at sites that DNR identifies for additional study with regard to pumping wells located outside the identified Tier 1 search radius or Tier 2 actual or modeled plume.
2. Jointly develop scope of work for the additional study to be completed consistent with Item 5 in ARC 6892B as published July 2, 2008 in the Iowa Administrative Bulletin.
3. Jointly review and evaluate proposals in the selection of qualified professionals to perform the requested scope(s) of work.
4. Assist DNR with the evaluation of data obtained as studies are completed under this agreement.
5. Provide for the completion of work or direct funding through any applicable agreements or sources to address risk associated with specific sites for which a No Further Action certificate is issued during the term of this agreement that are proven through the study under this agreement to be likely to impact a public water supply well not identified in the calibrated Tier 2 model receptor ID plume.
6. Provide benefits to otherwise Fund eligible sites identified in the study that the DNR determines and reasonably demonstrates pose an unreasonable risk to public water supplies consistent with Iowa Code Section 455B.474 despite meeting the No Action Required standard in the calibrated model in IAC 567 Chapter 135 but for which a No Further Action certificate has not been issued.
7. Provide for corrective action at sites under any agreement pursuant to 455G.9(1)(k) at sites that have been issued a No Further Action certificate but for which the risk evaluation under this Agreement demonstrates that the site poses an unreasonable risk to a public water supply not identified by the calibrated model.
8. If the results of the study of public water supply wells located outside the actual or modeled groundwater plumes indicate that additional assessment procedures are required to adequately protect public drinking water supplies, creating a DNR responsibility to promulgate rules to outline those procedures, the Board shall continue providing funding under items 6 and 7 of this section beyond the term of this agreement and at least until the aforementioned rules are adopted.

V. FINANCING

The Board shall pay all costs associated with the administration of this Agreement in accordance with the terms of this Agreement. The DNR shall pay all costs associated with DNR personnel.

VI. AMENDMENT

This Agreement may be amended from time to time by written agreement of the Parties. All amendments shall be in writing, signed by both Parties, and filed with the Secretary of State and recorded with the Polk County Recorder.

VII. TERMINATION

A. Termination Upon Mutual Consent. This Agreement may be terminated upon the mutual written consent of the parties.

B. Termination By One Party. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations, conditions, and procedures set forth below, either party to this Agreement shall have the right to terminate this Agreement without penalty by giving sixty (60) days' written notice to the other party to the Agreement as a result of any of the following:

1. There are insufficient funds or resources available to allow a party to fulfill its obligations under this Agreement;
2. A change in the law prevents or substantially impairs a party's ability to participate in this Agreement; or
3. Failure to perform responsibilities described in this Section IV of this Agreement at a quality or quantity that can be reasonably expected by the other party.

VIII. NOTICES

Whenever notices and correspondence are to be given under this Agreement, the notices shall be given by personal delivery to the other party, or sent by mail, postage prepaid, to the other party as follows:

To the Board

Iowa UST Fund Board
2700 Westown Parkway, Suite 320,
W. Des Moines, Iowa 50266

To the DNR

Iowa Department of Natural Resources
Iowa Department of Natural Resources
UST Section
502 E. 9th Street

Des Moines, IA 50319

IX. APPLICABLE LAW

This Agreement is to be governed by the laws of the State of Iowa.

X. FILING AND RECORDING

It is agreed the Board will electronically file this Agreement with the Secretary of State, and electronically file any amendment, modification, or notice of termination of this Agreement within thirty days as provided in Iowa Code section 28E.8 (2007).

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the parties have entered into this 28E Agreement and have caused their duly authorized representatives to execute this 28E Agreement.

**IOWA COMPREHENSIVE PETROLEUM
UNDERGROUND STORAGE TANK
FUND BOARD**

**IOWA DEPARTMENT OF NATURAL
RESOURCES
IOWA DEPARTMENT OF NATURAL
RESOURCES**

BY: _____
Susan Voss, Chair

BY: _____
Richard Leopold, Director

DATE: _____

DATE: _____